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March 21, 2006

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Attn: Art Unit 3624
Patent Examiner Kelly Campen

Re: **Application No.:** 09/077,337
Confirmation No.: 5900
Appellants: Jay Paul Drummond, et al.
Title: Automated Banking Machine
Apparatus and System
Docket No.: D-1077

Sir:

Please find enclosed Appellants' remarks for filing in the above identified Application.
No fee is deemed required.

Very truly yours,

Ralph E. Jocke
Reg. No. 31,029

CERTIFICATE OF MAILING BY EXPRESS MAIL

I hereby certify that this document and the documents indicated as enclosed herewith are being deposited with the U.S. Postal Service as Express Mail Post Office to addressee in an envelope addressed to Mail Stop Amendment, Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450 this 21st day of March 2006.

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Ralph E. Jocke

330 • 721 • 0000
MEDINA

330 • 225 • 1669
CLEVELAND

330 • 722 • 6446
FACSIMILE

rej@walkerandjocke.com
E-MAIL

231 South Broadway, Medina, Ohio U.S.A. 44256-2601



03-22-06

IFW 3624

D-1077

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of)	
Jay Paul Drummond, et al.)	
)	
Application No.: 09/077,337)	Art Unit 3624
)	
Confirmation No.: 5900)	
)	
Filed: May 27, 1998)	Patent Examiner
)	Kelly Campen
Title: Automated Banking Machine)	
Apparatus and System)	

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

Kindly enter Appellants' remarks without prejudice as follows:

The Attempted Suspension of Action is Legally Improper

The Office attempted to suspend action in the Application on February 8, 2006. However, this Application already received an initial suspension of action under 37 CFR § 1.103 on October 1, 2002. Any second or subsequent suspension of action in an Application must be decided and approved by the Technology Center Director 3600 (MPEP § 709).

There is no evidence of record that the Director approved of further suspension of action in this Application. Nor does the attempted suspension of action of February 8, 2006 include the Director's signature, as is required. Accordingly the Office has not followed its own rules in attempting to again suspend action in this Application. Thus, the attempted suspension action is legally invalid. The status of this Application remains active, not suspended. In response to the Board of Patent Appeals & Interferences' decision (on November 29, 2005) completely reversing the Examiner, Appellants request their overdue Notice of Allowance.

MPEP § 709 II

The rules of the Office make clear that:

"Suspension of action at the initiative of the Office should be avoided, if possible".

A second or subsequent suspension of action is necessary only "in an extraordinary circumstance".

The Office has not met the burden for initiating a second suspension of action. The reason provided by the Office for attempting a second suspension is because "A reference relevant to the examination of this application may soon become available". However, this reason does not meet the legal criteria for initiating a second suspension of action in this Application.

The Office has not shown that another suspension of action is necessary. First, suspension of action *can* "be avoided" (e.g., allowance in accordance with the Board decision). Second, there is no "extraordinary circumstance" that absolutely demands another suspension of action. What extraordinary circumstance occurred (in the Patent Office) that prevents this Application from being allowed, especially in light of the Board decision? Neither the Office nor the Application record provides any justification whatsoever for another suspension of action.

Special Status

This application has been pending more than five years and has an effective pendency approaching ten years. In accordance with the rules of the Office (MPEP § 708.01 (G and I)), this application is to be treated as a "special" case and is to be advanced (not suspended) by the Office. The special status entitled to this Application precludes it from being suspended.

Acts carried out by the Office raise questions of impropriety

The reason given for the initial suspension (on 10/1/2002) was that "The outcome of a pending Interference has a material bearing on the patentability of the claims in this application". However, Appellants had no part in or knowledge of the "alleged" Interference. Nor does there appear to have been any relevant Interference, as alleged by the Office.

The evidence of record (before and after the initial suspension) does not support the reason provided for the initial suspension. Rather, the evidence of record is directly contrary to the reason provided. In the very next Action (following the initial suspension) the Office relied on documents that were already available prior to the suspension. Thus, the outcome of the alleged Interference did not have any material bearing. It follows that the reason provided by the Office for the initial suspension was without merit and appears to have been merely a pretext

improperly engaged in by the Office to cause delay and prejudice Appellants. Both the initial suspension and the current attempted suspension, because they are based on mere allegations without any supporting evidence of record, appear to be nothing more than made-up unsupported excuses by the Office to deny Appellants' grant of patent. Appellants request that the teachings considered in connection with the alleged "Interference" be made of record so that the record can be complete in accordance with the rules of the Office. How is it that the Office considered the teachings relevant enough to suspend action, but not relevant enough to make of record (e.g., via form PTO-892)?

The record continues to lack a valid reason for the initial suspension. Nor does the record provide any explanation or accountability for the improper initial suspension of action. As the initial suspension appears to have been an abuse of Office rules, with the lack of oversight by the Office still remaining, any subsequent suspension is plainly improper.

Undue Length of Prosecution

This Application has received five non-final rejections which necessitated three Appeal Briefs. After all of these Actions the Board agrees with Appellants. The prosecution history suggests that the Office is deliberately and illegally preventing this Application from being allowed. The Office's continuing denial of Application allowance is contrary to examination procedures and Office policy, and it also constitutes arbitrary and capricious conduct against Appellants.

Request for Correction of the Record

The PAIR system indicates that a letter of suspension was mailed to Appellants on February 8, 2006. Appellants did not receive the letter.

The PAIR system also indicates that a miscellaneous incoming letter was received by the Office on February 10, 2006. This miscellaneous letter seems almost identical to the letter of suspension supposedly mailed February 8, 2006. The only difference is that it includes the OIPE date stamp of February 10, 2006 on the first page. In conclusion, the letter of suspension sent by the Office on February 8, 2006 was the same letter that was received by the Office on February 10, 2006. The Office sent the letter to itself.

Appellants request that the record be corrected to show that Appellants did not (nor could not) receive the letter of suspension mailed February 8, 2006. Appellants further request that the Office correct its mail handling procedures.

Comments on the Substance of the Interview

An interview was conducted on January 30, 2006 between Examiner Kelly Campen and a representative (Ralph E. Jocke, Reg. No. 31,029) of Appellants. The courtesy of the Examiner is appreciated.

The Examiner requested authority to perform an Examiner's amendment to cancel the withdrawn claims in exchange for allowing the Application. Appellants' representative granted the Examiner authority to perform the indicated amendment based on the Application being allowed. The agreement was two-way. No agreement was made to cancel claims without allowance. Since the Application has not yet been allowed, the withdrawn claims remain pending. Nor can claims be canceled by an Examiner's amendment without placing the Application in condition for allowance. No agreement was reached to cancel claims to impose a suspension of action.

The Indication of Allowance

Appellants are bewildered with regard to the trustworthiness of the Office. Certain individuals in the Office appear to be engaged in a deliberate pattern of improper activity in violation of the patent statutes, the applicable regulations and Appellant's fundamental due process rights. How can the Office (on one hand) notify Appellants that the Application will be allowed (via an Examiner's amendment), then (on the other hand) try one week later to again impose a suspension of action?

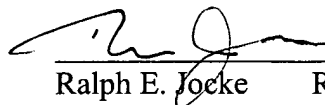
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Appellants reserve all rights to seek legal recourse for any and all improper actions conducted by the Office regarding this Application.

Conclusion

Appellants respectfully submit that this Application is in condition for allowance. The undersigned is willing to discuss any aspect of the Application by telephone.

Respectfully submitted,



Ralph E. Jocke Reg. No. 31,029
WALKER & JOCKE
231 South Broadway
Medina, Ohio 44256
(330) 721-0000